S.B.Civil Writ Petition No.5631/2004
Umesh Bhardwaj & Anr.
vs
Radhkishan Tandon& Ors.

DATE OF ORDER : - 14.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.J.P.Joshi,for the petitioner.
Mr.Shreedhar Purohit, for the respondent.

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Heard learned counsel for the parties.

It appears from the facts of the case that defendant-petitioners' application under Order 6 Rule 17 CPC was dismissed by the trial court on 5th Oct., 2004 and case was fixed for the evidence of the defendant on 5th Nov., 2004. On 5th Nov., 2004, the petitioner submitted an application under Order 14 Rule 5 CPC. That application was allowed with the consent of the plaintiff and the issues were amended. On the same day, the defendant's evidence was closed on the ground that plaintiff is senior citizen and the sufficient opportunity has been granted to the defendant for producing the evidence.

It appears from the copies of the order-sheets placed on record that in fact before 5th Nov., 2004, the case was fixed for the orders on the application filed under Order 6 Rule 17 CPC and that application was dismissed and, thereafter, the evidence of the plaintiff was closed on

the next date only. It appears that before 5th Nov., 2004 in the year 2003, few adjournments were granted to the defendant to produce the evidence, but, thereafter, the matter was fixed for the evidence of the defendant after the decision of all the application and the date 5th Nov., 2004 was the first date for the evidence of the defendant.

In view of the above facts, the order dated 5th Nov., 2004 so far as closing the evidence of defendant cannot be sustained, hence, set aside.

In view of this order, the trial court shall permit the evidence of the defendant, but the defendant, can be allowed two opportunities to complete his all evidence. Since the suit is filed by the senior citizen, therefore, the trial court is expected to decide the suit expeditiously.

Hence, the writ petition of the petitioner is allowed.

(Prakash Tatia), J.

c.p.goyal/-